

Revised May 9, 1988, May 2, 1992, and May 4, 1996

TOWN OF WENHAM WATER RESOURCES PROTECTION BYLAW

Section 1: Purpose

The purpose of this bylaw is to protect the water resources, wetlands, and adjoining areas in Wenham by prior review and control of activities deemed by the Conservation Commission likely to have a significant or cumulatively detrimental effect upon the following values: public or private water supply, groundwater, fisheries, wildlife, wildlife habitat and the prevention and control of flooding, erosion, sedimentation, storm damage, or pollution (collectively, the "resource area values protected by the bylaw"). This bylaw is intended to utilize the Home Rule Authority of this town to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act, G.L. Ch. 131, sec. 40 and Regulations thereunder, 310 CMR 10.00.

Section 2: Jurisdiction

Except as permitted in writing by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, discharge into, build upon, otherwise alter or degrade the following resource areas: any freshwater wetland as determined by vegetational community, soils composition or hydrologic regime including any marsh, wet meadow, bog, or swamp; any lake, stream, river, or pond, whether intermittent or continuous, natural or manmade; any land under such waters; any bank or beach; or lands within one hundred (100) feet of any of the aforesaid resource areas; any land subject to flooding or inundation by groundwater, surface water or storm water.

Section 3: Exceptions

The application and permit required by this bylaw shall not be required for maintaining, repairing, but not substantially changing, relocating or enlarging, any existing or lawfully located structure or facility used in the service of the public to provide electricity, gas, water, telephone, telegraph, or other telecommunication services, provided that, except in cases of public emergency, written notice and plan of work has been given to the Commission at least forty-eight (48) hours prior to commencement of work, and provided that the work is performed in accordance with standards adopted in regulations promulgated under this bylaw.

The application and permit required by this bylaw shall not apply to any emergency project necessary for public health and safety which has been certified as an emergency project in accordance with MGL Ch. 131, Section 40; provided that the Commission or its agent certifies the work as an emergency project; provided that within 30 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The application and permit required by this bylaw shall not be required for work performed for the normal maintenance or improvement of lands in lawful, active agricultural use, provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

Other than as stated in this section, the exceptions provided in the Wetlands Protection Act, G.L. Ch. 131, sec. 40 and Regulations, 310 CMR 10.00 shall not apply under this bylaw.

Section 4: Requests for Determination and Applications for Permits

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw shall request in writing a determination from the Commission. Such request for determination shall contain data and plans as specified by regulations adopted under this bylaw.

The Commission in an appropriate case may accept any request, application and plans filed under M.G.L. Ch. 131 Sec. 40 as having also been filed under this bylaw. An application for a permit or a request for determination shall be hand delivered or sent by certified mail to the Commission. Any application for a permit or determination shall at the same time be mailed or delivered to the Board of Selectmen, Planning Board, Zoning Board of Appeals, Board of Health and Building Inspector.

The applicant shall pay fees as specified in regulations adopted under this bylaw. The fee is in addition to that required by the Wetlands Protection Act, M.G.L. Ch. 131, sec. 40. The Commission may waive the fees, costs, and expenses for an application or request filed by a government agency, or if the project serves a public purpose as determined by the Commission.

Upon receipt of a permit application or request for Determination, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application.

The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be \$15,000.

Section 5: Notice and Hearings

The Commission shall hold a public hearing within twenty-eight (28) days from receipt of a completed application or request for determination, provided that written notice of date, time, and place of hearing is given at least five (5) working days prior to the hearing, at the expense of the

applicant, to all abutters, and in a newspaper of general circulation in Wenham. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When the applicant is other than the owner, the application or request for determination, the notice of the hearing, and the permit or determination shall be sent by the Commission to the owner.

Upon written request of an applicant, the Commission may extend the twenty-eight (28) day time period provided notice is given in accordance with this section of the bylaw. The Commission in an appropriate case may simultaneously hold a hearing under this bylaw and the hearing conducted under the Wetlands Protection Act, M.G.L. Ch. 131, sec. 40.

For reasons stated at the hearing, which may include a request from a Town Board or inspector named in Section 4, the Commission may continue the hearing to a date certain, announced at the hearing, or to a date within twenty-eight (28) days of receipt of information deemed necessary by the Commission.

Section 6: Determinations, Permits, and Conditions

The Commission in an appropriate case may simultaneously issue the permit, determination, or other action on an application issued under this bylaw with the Determination of Applicability, Order of Conditions, or other action issued or taken under the Wetlands Protection Act, M.G.L. Ch. 131, sec. 40, when applicable, or may proceed independently on matters not subject to said Act.

Within twenty-eight (28) days following the close of a hearing held on a request for determination of jurisdiction or applicability of this bylaw, the Commission shall issue a written response. The response shall include findings of fact and shall state whether or not an application for a permit under this bylaw must be filed.

If the Commission, after a public hearing on an application for a permit, determines that the activities which are the subject of the application are likely to have an effect upon the values protected in this bylaw, the Commission, within twenty-eight (28) days following the close of the hearing, shall in writing make findings of fact determining whether such effect is significant or cumulatively detrimental and whether such effect can be mitigated so as to protect said values. Based on such findings, the Commission shall either issue or deny a permit for the activities requested. Permits shall contain conditions which the Commission deems necessary to protect said values, and all activities authorized by the permit shall be conducted and performed so as to comply with those conditions. For good cause the Commission may amend or modify the conditions of a permit issued under this bylaw after public notice and hearing.

The Commission is empowered to deny in writing a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the performance standards and other requirements in regulations of the Commission; for failure to present adequate evidence that the proposed work will not have significant or cumulatively detrimental effects upon the values protected by this bylaw; or when no conditions are deemed by the Commission to be adequate to protect resource areas.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. The Commission may extend any permit for one or more periods of up to three years each.

Section 7: Regulations and Definitions; Establishment of Fees

After public notice and public hearing, the Commission may promulgate or amend rules and regulations to accomplish the purposes of this bylaw and may establish a schedule of filing fees and consultant fees to be paid by persons making requests for determinations or applications for permits hereunder. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

Except as otherwise required by this bylaw or regulations promulgated thereunder, definitions and regulations set forth in M.G.L. Ch. 131, sec. 40 and 310 Code of Mass. Regulations 10.00 effective November 1987 as amended from time to time shall apply.

Section 8: Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed in a permit issued hereunder be secured wholly or in part by methods set forth in the regulations adopted under this bylaw.

Section 9: Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

The Commission and its agents shall have the authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by enforcement orders, administrative orders, and civil and criminal court actions. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement. Any person who violates the provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.

The violation of any provision of this bylaw, or regulation, or permits issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues or unauthorized fill or other alteration remains in place shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

Section 10: Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

Section 11: Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with G.L. Ch. 249, sec. 4.

Section 12: Relation to the Wetland Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, M.G.L. Ch. 131, sec. 40, and Regulations 310 CMR 10.00, thereunder.

THIS IS THE VERSION APPROVED BY THE ATTORNEY GENERAL 8/5/1996